Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1994

ROBERT D. SPICKLER,
Petitioner

v.

STATE OF MAINE,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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63 pp

QUESTION I

WHERE THE UNDISPUTED FACTS SHOW THAT THE PETITIONER, OVER A PERIOD OF YEARS IN SEVERAL CASES, HAS BEEN SUBJECTED TO ONGOING VIOLATIONS OF HIS FOURTEENTH AMENDMENT RIGHTS BY THE MAINE COURTS, MAY HE SEEK PROSPECTIVE RELIEF IN THE FEDERAL DISTRICT COURT?

QUESTION II

SHOULD A PRO SE PLAINTIFF IN A SEC. 1983 ACTION, WHO NAMES THE WRONG DEFENDANT OR, OTHEWISE, HAS CORRECTIBLE DEFECTS IN HIS COMPLAINT BE GIVEN THE OPPORTUNITY TO AMEND IN ORDER TO REMOVE THE DEFECTS?

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GROUNDS ON WHICH JURISDICTION IS INVOKED

Date of Entry of Judgment in the District Court.....Oct. 18, 1994

Date of Entry of Judgment in First Circuit Court of Appeals.....May 18, 1995

Statutory Provision Conferring Jurisdiction on this Court...28 U.S.C. Sec. 1331 also: 28 U.S.C.Sec.1343(a)(3)

CONSTITUTIONAL PROVISION INVOLVED

FOURTEENTH AMENDMENT:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTE

42 U.S.C. Sec. 1983

Sec. 1983 provides for relief in the federal court system for the violation of a person's federally protected rights "under color of state law.

STATEMENT OF THE CASE

The undisputed facts which follow, clearly show that the Petitioner is a member of a very small minority class.

As a member of the minority class of pro se civil plaintiffs against defendants whose trial attorneys are the majority class which outnumbers his class by thousands to one, he has been subjected to unequal treatment by the courts below which have symbiotically sided with the attorneys, thus prejudicing Petitioner's rights to due process and equal treatment as guaranteed by our constitution.[1]

The examples of this prejudice are many, but in order to keep this petition "as short as possible", Petitioner will restrict himself to only the two questions presented.[2]

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[1]Petitioner prays that Associate Justice Clarence Thomas will find the time to carefully review, at least, this Statement for he is most likely to grasp what petitioner is trying to tell this Court, and it is hoped that he will try to convince three other justices to grant this petition.

[2]The Complaint consists of fifteen counts, thirty-eight pages and over one hundred allegations claiming many instances where some of Maine judges have violated the protection of the Fourteenth Amendment and will probably continue to do so.

BACKGROUND

Petitioner Robert D. Spickler has been a self-employed businessman for most of the years after he was discharged from the Army of the United States at the end of World War II.

During the times in which the facts concerning this petition occurred he operated several businesses, all of which having to do with real estate sales, development and investment.

He has been licensed as a real estate broker in every New England state except Vermont, and he also was a licensed securities dealer in the State of New Hampshire.

In 1974, he proceeded as plaintiff, pro se, in a civil matter which involved a defendant who was a part-time county attorney in Portland, Maine.[3]

This man, always a very political person, begame the governor of Maine a few years later.

During the late 1970's and early 1980's, Petitioner found it necessary to represent himself

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[3] After trying to employ several lawyers, without success, to proceed against this person, Spickler had to go ahead without an attorney to represent him, although none of those lawyers he consulted stated that the case was groundless, they would not sue that man.

in civil matters having to do with his various businesses.[4]

During those earlier days, the Honorable Chief Justice Vincent McKusick headed the Maine Supreme Judicial Court and under Chief Justice McKusick, Petitioner brought various appeals based on abuse of discretion in the Maine Superior Court. Petitioner prevailed in some of those appeals and fared adversely in others.

However, until Chief Justice McKusick retired after 1989, there were no circumstances, even when the Supreme Judicial Court rejected his claim of error, that caused him to believe that he was not treated fairly and equally by the Maine Supreme Judicial Court.

After Chief Justice McKusick retired and Chief Justice Daniel Wathen replaced him, all of the grounds for Petitioner's claims of violations of his constitutional rights began to take place. These violations originated in the Maine Superior Court where his protests were ignored and then were later effectively rejected on appeal by the Wathen court which would not even address them.

As initially promised, Petitioner will make this paper "as short as possible" and as he did in

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[4]For example, see, Robert D. Spickler v. Robert M. York, 505 A.2d 87 (Me. 1986)

the appeal to the First Circuit Court he will present two examples of his experiences in the Maine court system which clearly illustrate, that de facto, he has no civl rights as guaranteed by the Fourteenth Amendment. Whenever he has recently appeared before the Maine Courts those rights have been summarily banished as a modus operandi.

First Example:

During the period from 1989 to 1994, Petitioner was a pro se plaintiff in various lawsuits pending in the Maine Superior Court or on appeal in the Maine Supreme Judicial Court, sometimes referred to as the Law Court.

The attorneys representing the defendants in those lawsuits adopted a policy of making reckless false statements to judges, juries and the Law Court.

These false statements were vitally relevant and always went straight to the heart of genuine issues of material fact in those cases.

Petitioner always protested this misconduct on the grounds that those statements were not supported by any record and did not conform to any available evidence, and that the falshoods were presented by those attorneys in violation of the Bar Rules. He told the Court that this misconduct was intended to mislead the court into ruling against him.

A good summary of what Spickler is trying to tell this honorable Supreme Court of the United

States will be found in documents presented to the Law Court in the recent appeal of Spickler v. York decided finally on June 23, 1995. (A separate petition for cert. will follow.)

In those documents, Petitioner presented to the Law Court his MOTION TO STRIKE APPELLEE YORK'S BRIEF ON APPEAL because it is riddled with untruthful statements made by York's attorneys. [See documents in A-7 - 20, MOTION TO STRIKE APPELLEE'S BRIEF as they were submitted to the Law Court of the State of Maine].[5] These documents were also included in the Appendix of the subject appeal to the First Circuit.

In his appeal brief to the First Circuit, Petitioner gave evidence in minute detail about the alleged misconduct of each lawyer, identifying each by name, the citation of the case, the specific misrepresentation made to the court, a showing of proof that the false statement was made, an explnation of how Petitioner was damaged, and a showing that the state courts ignored the petitioner's request for relief. [Copies of pages 6 - 12 of Petitioner's Brief on Appeal to the First Circuit A-22-29]

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[5]Not only did York's attorneys, Piper et als, fail to respond to this motion, the Law Court also chose not to respond in any manner, whatsoever. It simply ignored the motion.

ANOTHER EXAMPLE OF FACTS BY WHICH STATE OFFICIALS VIOLATED PETITIONER'S CIVIL RIGHTS

In September 1991, the Maine Superior Court barred Robert Spickler from being a plaintiff in a lawsuit against Key Bank on his claim that the bank mishandled the sale of certain real estate and sold it for less than its true worth. Over Robert's protests, the court ruled that the lot was deeded to Olive S. Spickler, and he had no interest in the lot and, therefore, would not suffer any personal damage.

The bank won this action and the same court then placed a judgement on Robert Spickler which ordered him to pay the bank's substantial legal costs. The First Circuit was thoroughly briefed on this issue **[Pgs. 5, 6, 15 of Spickler Brief on Appeal to the First Circuit A-21, 22,31]**

As a result of these underlying facts which show blatant continuing violations by state actors, Petitioner brought a Title 42 Sec. 1983 action in the U.S. District Court, erroneously naming the State of Maine as the defendant rather than naming the individuals in their official or personal capacities who acted for the state.

The District Court, forthwith, dismissed the complaint on the grounds that Petitioner was under an injunction obtained by Attorney Richardson in 1987.

(Richardson made ex parte misrepresentations to a District Court Judge who was made to understand that Spickler was an unstable person whose own lawyer even disagreed with him on vital matters.) [A-28]

Petitioner then moved for reconsideration and a hearing so that he could reinstate the action. The District Court denied the hearing and denied the motion and confirmed that this action be dismissed on the grounds that it was an attempt to relitigate decided state cases, that it did not present a prima facie case and was "frivolous". [A-5,6]

On appeal to the First Circuit, it also denied Petitioner's motion to be heard[6], and it affirmed the dismissal of the case repeating that Petitioner did not present a "prima facie" case and that Petitioner appears only to be attempting to overturn state court decisions. [A-1 - 3]

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[6] To the best of Petitioner's knowledge and belief, the First Circuit, as a policy, does not hear oral arguments by pro se plaintiffs. Sadly, all of the courts through which Peitioner has sought relief on these civil rights violations have denied him a hearing, the Maine Supreme Court, the U.S. District Court and the U. S. Court of Appeals. Even they can't bear to face him and still treat him as they did. Note Petitioner's futile Motion to be heard. [A-36]

ARGUMENT

Before beginning the rest of this Argument, Petitioner wants to demonstrate to this Court a fresh example of what has been happening to him all along. In the background history which brought about this petition, he has shown that so long as a lawyer opponent makes a statement or an assertion to some Maine judges, or to the current Maine Law Court, it matters not that the statement is false or misrepresentative of the facts, the courts, without proof, and over the protests of the petitioner who gives his own facts proving the lawyer's statement to be a misrepresentation, will adopt the lawyer's falsehood and make it a court-proven fact. Mr. Ketterrer repeats in his brief at Page 4, and again at Note 4, that Spickler is attempting to impugn the outcome of litigation resolved in the state courts. But, at Footnote 9 on Page 7 of his Brief on Appeal to the First Circuit, Spickler argued:

> (9) It is meaningful that in its response (to Plaintiff's Argument) that Plaintiff's complaint presented, at least, a prima facie case, the State argued, without being able to offer factual support or support in law, that Spickler was "simply attempting to relitigate cases laid to rest by the State of Maine!", It is sad that the District Court, also, without citing support in fact and law, subjectively, agreed. [APP.135,136]

Also see Petitioner's ARGUMENT IB of his Brief on Appeal. [A-29,30]

But no argument no matter how strongly proven could persuade the First Circuit that simply because a lawyer says it against a pro se party, it is not necessarily true and, when a pro se plaintiff proves his point beyond any doubt, it's not false, and so, the First Circuit said,

> "Third, Plaintiff fails to appreciate that lower Federal Courts lack jurisdiction over challenges to State Court Decisions." [A-3]

Examples of this occurrence are myriad throughout Petitioner's complaint,[7] but now Spickler has this "FRESH"one right here in the record of this case, as follows:

Mr. Ketterrer, for the state, argued, falsely, to the District Court that Spickler is only seeking to relitigate cases he lost in the Maine Courts.

Spickler argued back that he is not seeking any such thing. He knows that the law of res judicata applies. He explained that he is only seeking redress for violations of his civil rights, primarily, for the taking of his property without due process.

The District Court, irrespective of the fact that this complaint clearly asked for nothing else,

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[7] See again [A-23] how Mr. Robitzek convinced the Maine Supreme Judicial Court that his statement to the jury that there was no right-of-way to Spickler's oceanfront property was true. The Maine Supreme Judicial Court ignored Spickler's claim that he had a recorded, deeded right-of-way, and, without any evidence to support their decision, they wrote into their decision that there was no right-of-way or access to the subject real estate. Spickler v. Key Bank, 618 A.2d 204 (Me. 1992)

automatically includes in its Decision to dismiss that Spickler "attempts to relitigate matters".

Then, on appeal to the First Circuit, Petitioner did not challenge the state judgments because he knows he cannot, and he has never sought otherwise. Wrong statements by opposing lawyers should not change those facts.

But then, the Appeals Court, with no hearing or effort to confront Spickler on this issue, automatically agrees with the assertion and makes it the third reason for rejecting his appeal; i.e., "Plaintiff fails to appreciate that lower federal courts lack jurisdiction over challenges to state court decisions." [A-3]

If this Court does not intercede, every judge who is so inclined will continue to ignore Spickler's rights. And every lawyer who opposes him will know it and go hog wild with the rules of conduct.

This honorable United States Supreme Court should allow this writ to issue for these reasons:

1. The basic facts surrounding this petition show, beyond any doubt, that Spickler's property was taken from him by a state court judge who would not permit him to be a party in the very lawsuit through which the judge ordered his property to be taken.

BEST AVAIL

2. Several Maine lawyers, who represent defendants Spickler has sued, frequently resort to unlawful misrepresentations to judges and juries that irreparably harm the Petitioner in the Maine courts.

3. The Maine courts refuse Petitioner's prayers for relief from these violations of his Fourteenth Amendment rights and, in fact, as a policy, completely ignore him every time he seeks relief.

4. The evidence supporting statements 1, 2, and 3, above, is undisputed by the Attorney-General of Maine who did not and could not contradict any of it, and therefore, didn't even try to contradict.

5. Although Petitioner's complaint should not have named the State of Maine as a defendant because it is immune from suits under the Eleventh Amendment, under the doctrine of Hughes v. Rowe, the Appeals Court should have given Petitioner the opportunity to amend the complaint in order to name the proper defendants rather than affirming the District

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Court's automatic ruling that it was frivolous.[8]

6. Rule 10.1(a) of the Rules of the Supreme Court indicates that a special and important reason for consideration by this Court in granting cert. is 'when a court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter'.

In Dayse the 5th Circuit ruled in 1990:

> ". . . (W)hen a pro se plaintiff's suit raises a constitutional claim, but he has inadvertently sued the wrong parties he should [be] given leave to amend to sue the appropriate party or parties. 894 F.2d at 174 (5th Cir. 1990)

The First Circuit in its unpublishable decision obviously disagreed and called the Complaint "irreparably flawed and, it is not and the flaws can be removed.

7. With the Amended Complaint and its correctly named defendants, Petitioner would be entitled

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[8] In Hughes, this honorable Court established that pro se complaints are subject to "(a) less stringent standard than formal pleadings drafted by lawyers and should be liberally construed in the plaintiff's favor".

to prospective relief under the Doctrine of Ex parte Young, 109 U.S. 123 (1908).[9]

CONCLUSION

Speaking only objectively, and avoiding all subjective opinions, Petitioner has learned from many years of experience before the Maine courts and now, even before the federal courts, that pro se plaintiffs, especially in civil matters, are treated as sub-class citizens, unworthy of the courts' unbiased attention. The lower courts appear to resent them and treat them as despised trespassers. Please do not doubt that this is true.

It has been fifteen years since this Court has made its feeling be known in Hughes, and, obviously, the District Court and the Appeals Court need to be reminded of what is demanded of them in that mandate.

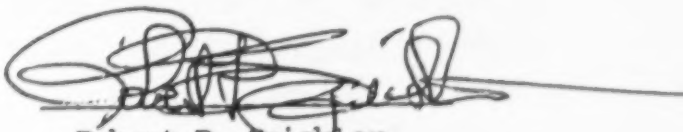
Nation-wide, there is a growing breakdown among decent people. Our law abiding, patriotic, tax paying fellow Americans are losing faith in our

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[9] By his sworn statements, Petitioner submitted uncontested evidence to the District Court that these Fourteenth Amendment violations are on-going currently and could reasonably be expected to continue, prospectively, with matters pending and with those yet to be introduced into the Maine Court system. See Excerpt of Brief to 1st. Circuit [A-30 - 33]. See also COUNT XV of his complaint. [A-39,40]

government! This Court should grant this petition to assure all of us that the Bill of Rights still means something in all courts, even for pro se parties, on whom some judges and lawyers gang up.

Signed at Phippsburg, Maine this 10th day of August 1995.



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